STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 3, 2011

In the Matter of WOOD, Minor.

No. 298794
Kent Circuit Court
Family Division
LC No. 09-052088-NA

Before: MURPHY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from an order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*) and (g). The child's mother voluntarily relinquished her parental rights and is not participating in this appeal. We affirm because the trial court did not clearly err in finding that statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

The minor child was removed from her mother's care in June 2009 after it was discovered that she had been sexually abused by her mother's boyfriend for a number of years. Respondent was incarcerated at the time. Although the Department of Human Services (DHS) proceeded directly with terminating the mother's parental rights, the agency indicated a desire to work with respondent in the event that he would be released within a reasonable amount of time and be able to demonstrate an ability to care for his daughter. Unfortunately, respondent was unable to avail himself of the limited programs offered at the Florence Crane Facility. However, contrary to respondent's assertions, the trial court's decision to terminate his parental rights was not based exclusively on his status as a prisoner; rather, it was clear that respondent was not in a position to care for the child and would not be able to do so within a reasonable amount of time.

Respondent spent most of the child's life in prison. Respondent re-offended on March 26, 2008, and was sentenced to a minimum of two years' imprisonment on November 6, 2008. His earliest discharge date was November 2010 and his maximum discharge date was 2034. By his own admission, respondent saw the child a total of "approximately seven, eight, nine, ten times, something like that" during the child's ten years of life. Respondent was released on parole November 9, 2010. Nevertheless, at the time of the termination hearing, there was no evidence that respondent would, in fact, be released at that time. At the time of the termination hearing, it was reasonable for the trial court to conclude that respondent's possible release some six months later was simply too much time for the child to wait. Respondent would not be able to provide for the child immediately upon his release. Rather he would have to demonstrate

stability for a minimum of six months. This was not an arbitrary time constraint that the trial court made up. Kristin Jelsma from Bethany Services testified that the agency would not even consider placing the child with respondent until he demonstrated stability for at least that amount of time. Respondent's release would entail more than a search for housing and employment, as respondent also had an admitted history of substance abuse and psychological problems. Respondent would need counseling and assessments, and even more importantly, he had a virtually non-existent relationship with his daughter, whom he saw only a number of times during her life. Six months was a generous calculation under the circumstances.

Respondent even admitted that he would not be in a position to care for the child upon his release. The following exchange took place between the prosecutor and respondent:

> *Q*. Just a couple more questions. You stated you just want to be able to visit – have weekend visits with your child. Do you remember saying that?
>
> *A*. Yes, I do. I said that.
>
> *Q*. I don't understand why you don't want – why don't you want custody of your child?
>
> *A*. Isn't it obvious?
>
> *Q*. No.
>
> *A*. Me, with a criminal record, and my sole reason is, is because I know for a fact that she'll be very well taken care of, if not spoiled, living with my family. I would rather her continue to live there than come to Grand Rapids and removing her away from an environment that she's happy in.

Respondent was not interested in personally caring for his daughter, but only wanted some say in her upbringing. Given his history, it was not erroneous for the trial court to conclude that the conditions leading to adjudication continued to exist and that respondent would not be in a position to provide the child with proper care or custody within a reasonable amount of time.

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court had to determine whether termination of respondent's parental rights was in the child's best interests. Although respondent claims that a bond existed such that the child would confide in him, the evidence revealed that she was forthcoming about the sexual abuse to a number of individuals, regardless of her relationship with them. In any event, the child's disclosure of the sexual abuse to respondent does not make up for the fact that they saw one another less than ten times in as many years. Respondent wrote to his daughter, at most, a total of 20 letters. The child told Jelsma that she did not want to read the letters and did not want anything to do with the people from her past because it was too traumatic. Given the lack of bond and the traumatic effect future contact might have on the child, the trial court did not err in finding that it was clear that termination of respondent's parental rights was in her best interests. She had been in care for a year and would have to remain in care for at least an additional year in order for respondent to demonstrate an ability to care for her. She was doing well in her relative placement with respondent's brother and was entitled to permanence and stability.

We reject respondent's claim that he was not afforded a reasonable opportunity to participate in the proceedings. Respondent's unpreserved claim of error is reviewed under the plain error rule, which requires respondent to show that (1) an error occurred; (2) the error was obvious; and, (3) it affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Respondent cites MCR 2.004 for the proposition that the trial court could not take action on the petition without affording him the opportunity to appear by telephone. The court rule states that a trial court *must* order telephone participation in termination proceedings when the parent is incarcerated within the custody of the Department of Corrections. MCR 2.004. MCR 2.004(F) specifically provides that

> a court may not grant relief requested by a moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. The provision shall not apply if the incarcerated party actually does participate in a telephone call, or if the court determines that immediate action is necessary on a temporary basis to protect the minor child.

While acknowledging that respondent was not given notice of the June 18, 2009, preliminary hearing, the referee found from the testimony that the situation "require[d] immediate action by the Court and it's necessary on a temporary basis to protect the child." Continuing the proceedings on this date without respondent's participation was, therefore, permissible under MCR 2.004(F) to protect the child, a victim of sexual abuse.

Respondent was also absent from the August 18, 2009, adjudication hearing. Respondent had been writted out of Florence Crane Correctional Facility, but there was no word from the sheriff's department regarding his whereabouts. The judge decided to proceed in his absence, but only with regard to the mother. The judge was entitled to do so, as the mother was the custodial parent against whom the allegations of abuse and neglect were made. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002). Respondent fails to demonstrate how his presence at the adjudicative hearing would have affected the outcome. The evidence against the mother allowed the trial court to assert its jurisdiction over the child and her brother.

Respondent entered a no-contest plea to the allegations in the petition on September 8, 2009. Respondent was not present at the October 15, 2009, disposition hearing, but that was likely due to the fact that he had already pleaded to the petition and the October 15, 2009, hearing involved taking additional testimony that concerned only the mother. The worker testified that she would create a PAA for respondent and send it to him in prison, and recommended he look into classes in prison. The worker demonstrated a willingness to work with respondent. Respondent fails to show how his absence was prejudicial.[1]

[1] A review hearing was held without respondent on February 10, 2010; however, there is no explanation for why respondent did not attend the hearing.

Respondent's reliance on *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), is misplaced. In *Mason*, the failure of the agency and the court to engage the father in the child protective proceedings was egregious. There are few, if any, similarities between respondent's case and *Mason*. The father in *Mason* was essentially denied the right to participate throughout the proceedings. There was no attempt to engage the father in services or even to keep him apprised of the case as it progressed. In respondent's case, there was testimony regarding the worker's attempts to actively engage respondent in services. Respondent was presented with a PAA, detailing what he needed to do to achieve reunification with the child. It is also important to note that respondent participated in the termination hearing (as well as at least one other hearing), even testifying on his own behalf. We do not read *Mason* to require reversal when a respondent does not attend a couple of hearings, but otherwise attends and the DHS involves respondent to the extent possible while he is in prison.

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro